

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – August 22, 2003

PRESENT:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair
Hon. Karen Adam
Hon. Bill Brotherton
Sidney Buckman
Kat Cooper
Frank Costanzo
William Fabricius
Nancy Gray

Bill Hart
Jennifer Jordan
Hon. Dale Nielson
Lori Connelly for David Norton
Karen Kretschman for Janet Scheiderer
Ellen Seaborne
Judy Walruff for Beth Rosenberg
Steve Wolfson
Jeffrey Zimmerman

NOT PRESENT:

Beverly Frame
Terrill Haugen
Ella Maley
Steve Phinney

Kelly Spence
Debbora Woods-Schmitt
Brian Yee

GUESTS:

Martin Susnjara
Michael E. Durham
William Sturgiss
Konnie Young
Coreen Young
Tarra Phares
Cindi Stoneman
Theresa Barrett
Steve Muratore
Anne Taylor
Annalisa Alvrus
Diane Brown
Katia Brown
Allie Bones
Evelyn Buckner
Danny Cartagena
Richard Alun Davis
Tina Hanseren
Dianne Post

Unknown
2nd Spoken Voice
Representing Self
Administrative Office of the Courts
Representing Self
Representing Self
Representing Self
Administrative Office of the Courts
Representing Self
Christian Science Committee
AZ Coalition Against Domestic Violence
AZ Protective Parents Network
Men's Anti-Violence Network
Governor's Office, Division for Women
Governor's Office, Division for Women
Self, Daughter and Extended Family
Concerned Citizen
Citizen
AZ Coalition Against Domestic Violence

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter

Administrative Office of the Courts
Senate
Administrative Office of the Courts

Rep. Johnson called the meeting to order at 10:10 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: A motion to approve the minutes of the July, 2003 meeting as submitted was made by Frank Costanzo and seconded by Jeff Zimmerman. Approved unanimously.

ANNOUNCEMENTS

Senator Bill Brotherton, Arizona State Senate, was introduced as the new Senate appointee to the Committee. Governor Napolitano appointed Dr. Bill Fabricius, to serve as a parent member. Dr. Fabricius is an associate professor of Psychology at Arizona State University and has conducted research and published his findings on children and divorce, most notably. Lori Connelly, Phoenix Police Department, was introduced as David Norton's designee for this meeting.

INTEGRATED FAMILY COURT REPORT

Maricopa County

Maricopa County continues progressing in its pilot project using many of the aspects found in the legislative plan, plus recommendations from their evaluation findings from 2002. They are expanding their Family Court and centralizing integrated cases into two divisions at the southeast facility in Mesa to better isolate cases which have overlapping domestic relations and juvenile issues. Two judges will hear crossover cases. All IFC judges are receiving training in family law, dependency and different database system. They have a one case/one team approach, consisting of a judge, commissioner, case coordinator and other court employees. Their local IFC committee continues to meet on a quarterly basis.

Coconino County

Coconino County developed a detailed set of recommendations. Judge Newton, Presiding Judge of the Superior Court in Coconino County, recently sent a letter to Dave Byers, Director, Administrative Office of the Courts, to describe the obstacles presented in trying to implement their pilot project. Inadequate funding will limit positions to oversee the project and services to be offered as part of the pilot. They have devised two proposed budgetary numbers for possible programs.

Pinal County

Judge Gilberto Figueroa, Presiding Judge of the Integrated Family Court in the Superior Court in Pinal County, joined the group by telephone. He also serves on the juvenile bench. Serving in both positions has afforded him the opportunity to observe overlapping cases. Unfortunately, although there are many overlapping cases, a practical way of hearing those cases in an integrated setting remains elusive in light of funding issues. Pinal County's Board of Directors are reluctant to impose additional fees on litigants who are financially strapped and already pay large filing fees.

Ellen Seaborne mentioned that Coconino County is considering placing fees on services currently provided by the court on which no fees are assessed, e.g. child custody evaluation and subsequent filings.

Judge Figueroa indicated that they plan to continue searching for options to make the pilot project work and invited innovative ideas from Committee members.

HB 2533

Theresa Barrett, Administrative Office of the Courts (AOC), provided a brief synopsis of HB 2533 signed into law this year. The bill directs the counties to transfer 75% of fee and fine collections to the state. Ms. Barrett explained that the Legal Division of the AOC recently released a statement regarding their interpretation of the impact of HB 2533 on the courts. In essence, only fines and fees that were in place prior to the passage of this bill are subject to the 75% fee transfer. Any fines or fees put in place after the new law takes effect after September 18, 2003, will not be subject to the fee transfer, which means courts who implement new fees to help support the Integrated Family Court pilot projects would not be subject to HB2533.

FALSE ALLEGATIONS IN ORDERS OF PROTECTION

Representative Russell Pearce

Representative Pearce discussed an issue he has observed over a span of 30 years as a law enforcement officer, a justice of the peace, and most recently as a legislator. The presented problem: A party who allegedly makes false accusations of domestic violence in court against their spouse in an attempt to the gain legal advantage in a divorce. The hearing is conducted in an ex parte manner. After the order of protection is issued and served, the Defendant is prevented by law from entering the marital property and from seeing the children. Rep. Pearce would like to work through this Committee to resolve this issue. He indicated that he believes that true abusers should be put away, but laws should be put in place to discourage or prevent false accusations. Where possible, there should be a hearing before an order is issued. He would like to see a system that protects everyone's rights and one in which it is easier to get an order of protection in proper cases.

He commented further that Orders of Protection are issued without probable cause and limited jurisdiction courts exercise power that they do not have. Further, the justice system is meant to be fair, but this issue does not lend itself to fairness and the system is greatly abused. The order of protection is used to get a husband out of the home and deny him access to the children. An order of protection is automatically harmful to the accused party in a custody case. Orders of protection are well-intended if the system of justice is allowed to work as intended.

His recommendations include:

- (1) Separate violent and non-violent domestic violence offenses.
Currently, the same weight is given to both violent and non-violent offences, but they should not be lumped together. Violent offenses should be treated with serious weight, while those of a non-violent nature should be treated to a lesser degree.
- (2) Evidence requirement in hearings (i.e. police reports; documented evidence of violence; medical reports)
Unless evidence of violence is presented, an order of protection should not be issued.
- (3) Consequences for false allegations
Generally, there are no consequences when a party levels false accusations in an order of protection hearing; laws should be enacted to allow the courts to assess consequences.
- (4) Cross orders of protection (also called mutual orders of protection)
After an order of protection is issued, the person on whom it is against could file an order of protection on the other party.

Steve Wolfson

Steve provided the perspective on the issue of false allegations in orders of protection as an attorney, judge pro tem and former chairman of the Family Law Section of the Arizona State Bar. He does not come from a particular belief, and serves in the role of answering the Committee's questions as to the legal process in these cases.

He indicated that approximately 20-30% of order of protection hearings result in quashed orders. Attorneys have to walk a tight rope in these cases and should be troubled by balancing of interests. Attorneys must consider the following in these cases:

- Is there current, relevant information?
- Is there evidence?
- Were the rules of evidence followed?
- Are children included in the order?
- Are property interests at stake?

Hon. Dale Nielsen

Judge Nielsen offered the perspective of a judicial officer in a small, rural county. He commented that all judges are required to take domestic violence training which includes issues surrounding orders of protection. They are trained that if any doubt exists as to the validity of the allegations, they should always go in favor of the order of protection for safety reasons. He indicated that he has been

duped in the past in order of protection hearings and realizes that when false allegations are leveled, it is to gain advantage in domestic relations cases. Attorneys sometimes tell their clients to get an order of protection to gain legal advantage. Parties are put under oath under penalty of perjury; in his court, in every ex parte hearing, he always uses a court reporter to record the hearing and looks for evidence such as police reports. He indicated that he shares some of Rep. Pearce's concerns about abuses of the system and takes the matter very seriously. Many times, people get back together after the issuance of an order of protection.

When a limited jurisdiction issues an order of protection that includes children, they have, in effect, entered a custody order.

Sen. Anderson asked if there are any consequences for making false allegations. Judge Nielsen responded that an investigation could be done and the order vacated. He does not see a lot of violations.

Sen. Brotherton commented that he agrees with Rep. Pearce in terms of providing safe houses for victims of domestic violence and encouraged him, as chair of the Appropriations Committee, to vote for funding for safe houses in the next legislative session. He also commented that he supports giving judges great discretion and is concerned about making large scale changes to the justice system without a thorough study. He believes there are false allegations in some cases, but there are also times when an order of protection should have been put in place, but was not.

Jennifer Jordan supports Sen. Brotherton's statements. She commented that there are not enough resources to help victims and we should not make it more difficult for them.

Nancy Gray asked if any documentation exists to support the numbers of false allegations. Rep. Pearce indicated that adequate records are not kept, but support exists in the form of anecdotal information. She indicated, by way of anecdotal information, that Yuma County judges do not issue enough orders of protection. She encouraged development of an empirical, evidence-based study before any laws are changed. Sen. Anderson suggested that we develop a survey for judges statewide to weigh in on the issue.

Frank Costanza's primary concern is the diminishing of psychological abuse in Rep. Pearce's presentation. The issue is an indictment of the Bar, not an indictment of the system and encouraged working with the state Bar to develop the survey.

Bill Hart commented that he does not understand the problem and provided statistics as to the number of domestic violence related police calls and the corresponding low numbers that resulted in orders of protection. He agreed that

sometimes people lie to get the order and that judges receive domestic violence training. He questioned the assertion about the ethics of the Bar and also encouraged development of a study.

Kat Cooper indicated that we can do more to improve the system and that in her experience working as a teacher, therapist and in the courts, she has seen attorneys who encourage clients to level false allegations to gain legal advantage. She has interviewed children who have been encouraged by one parent to lie. She supports looking at this issue and examining it fairly.

Jeff Zimmerman also indicated support of the development of a study.

Commissioner Adam believes a survey is a mistake and that overhauling the system should be done very carefully. A very small number of custody cases go to trial. She suggested the assistance of professional researchers if a study is undertaken.

Bill Fabricius volunteered to work with the Committee to look at the law and suggested using a two-pronged approach using data and the law and loopholes that are there.

The Committee may re-examine this issue at a later date for further discussion.

CALL TO THE PUBLIC

Michael Durham. Mr. Durham representing 2nd Spoken Voice, suggested that: 1) data gathering be reassigned to the Criminal Justice Commission, 2) DPS should add statistics on domestic violence, and 3) more funding for data collection in domestic violence should be attained.

William Sturgiss. Mr. Sturgiss, representing himself, stated that he has no objection to the court issuing orders of protection when warranted. His ex-wife obtained an order of protection through the justice court on encouragement of her attorney. He stated this is contrary to Arizona law. He eventually got sole custody of their child. He encouraged legislators not to view people with orders of protection against them in divorce cases as criminals. He also mentioned that a sign is posted in the Superior Court in Maricopa County Southeast facility that says orders of protection are not be used to gain temporary custody.

Coreen Young. Ms. Young, representing herself, is frightened by the way the system does not work. The judicial system did not work in an timely manner in her case as it took from September to July to reach resolution. She encouraged good research so changes will be based on facts.

Danny Cartagena. Mr. Cartagena, representing himself, said that false allegations were used to obtain an order of protection in his case and resulted in giving the other party a legal advantage. False allegations are very difficult to refute; it is almost impossible to

prove that you did not do something. Men are left without options; the Arizona Coalition Against Domestic Violence mission statement states that they help only women and children, not men.

Bruce Ledgerwood. Mr. Ledgerwood, representing himself, discussed his case and welcomed advice from anyone on the Committee. An order of protection was put in place against him because his daughter had bruising. The order was quashed and the mother was investigated and found to have committed the abuse. He was given sole custody of his daughter, but the mother still has the daughter. He has been turned away everywhere he has gone for help in order to protect his child and does not know where to turn next.

Richard Alun Davis. Mr. Davis, representing himself, indicated that Coconino County judges are hesitant to not issue orders of protection and the majority of abusers are men, not women.

Steve Muratore. Mr. Muratore, representing himself, thanked the Committee for their thoughtful consideration of these issues. He did not have access to legal resources when his ex-wife made false allegations. He now has sole custody of his daughter and she has to be in regular therapy. He indicated that there is a grave need for competent, reliable data.

Geraldine Anderson. Ms. Anderson, representing Arizonans for Gun Safety, stated that a reduction in deaths occurs when orders of protection are put in place. She suggested that guns should be banned from the home where domestic violence has occurred. She also suggested that orders of protection are a very useful tool, and even with abuses such as false allegations, women and children have to be protected.

Allie Bones. Ms. Bones, representing the Governor's Office, Division for Women, wanted the Committee to know that if Arizona adopts a policy allowing cross orders of protection, the state stands to lose \$10 million from the Federal Violence Against Women Act because it is in violation of its standards. Those funds go toward helping victim services, law enforcement, prosecutors and judges in the domestic violence arena.

Diane Brown. Ms. Brown, representing Arizona Protective Parents Network, stated that if she had been required to show evidence of abuse, she would be dead. She had three orders of protection against her batterer who was also a police officer. Even though the kids came home from their father with bruises, the court still granted joint custody.

Dorralee Sarda. Ms. Sarda, representing Justice for Children, suggested that agencies and shelters who help abused women and children would be a reliable data source if studies are to be conducted. She mentioned that cases have been submitted by both parents where the system has failed.

BREAK/LUNCH

The meeting was called back to order at 1:38 p.m.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The group drafted changes to A.R.S. § 25-403 for a proposal for joint custody and expanded parenting time. Essentially, the statute is left intact with only two or three sentences added at the beginning to indicate that parents who act in their child's best interests will share in the rights and responsibilities of shared parenting, both in temporary and final orders. If a parent requests sole custody, that parent must prove that shared parenting is not in the best interest of the child. The statute's current language, which discusses drug offenses, domestic violence, etc., would be left intact. The group also proposes that a parenting plan be required in every case. Rep. Johnson indicated she will contact other legislators who are interested in this legislation to invite them to join us. Sen. Brotherton suggested that the Governor's office should also be brought on board. The group will continue working on draft language to present at the September meeting.

Court Procedures – Nancy Gray for Brian Yee

The group continued their discussions regarding a dedicated family bench. They have begun drafting a letter to be sent to the judicial selection committee, but will wait until after the September meeting to finalize the letter. Rep. Johnson suggested that the family bench should be comprised of judges who want to be there.

Education/Prevention – Terrill Haugen

No report as the chairperson was absent. A report will be given next month.

BATTERED MOTHERS' TESTIMONY PROJECT

BILL HART

The Battered Mothers' Testimony Project was implemented by the Arizona Coalition Against Domestic Violence to explore the experiences of battered women in Arizona family court matters when child custody is at issue. They patterned the study after a Wellesley study. A sample of women who had participated in a contested custody hearing where domestic violence or child abuse were present were surveyed.

The report contains several recommendations for changes to Arizona courts, including increased domestic violence training for judges and court personnel, and a requirement for the court to make written conclusions of law when custody is contested. Bill recommended the formation of a workgroup of this Committee to study this issue. Rep. Johnson asked members to review the report before the next meeting; a workgroup can be formed if the Committee reaches consensus to do so.

CALL TO THE PUBLIC

Analisa Alvus. Ms. Alvus is the new Systems Advocate for Court Watch with the Arizona Coalition Against Domestic Violence. She supports statistical research and encouraged members to remember that anecdotal reports lead to empirical studies.

Debbie Harsh. Ms. Harsh stated that orders of protection are beneficial because a large number of perpetrators have respect for the order. Many would suffer consequences such as job loss if they violate an order of protection. The stress levels of the victim are passed to the children, so an order of protection provides some relief from that stress. She also mentioned that there is no easy remedy for false allegations made in order to obtain an order of protection, but victims of domestic violence should still be protected.

NEXT MEETING

The next meeting will be held on September 12, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119, Phoenix.

The topic will be the concept of a dedicated family bench. Presiding Judges Colin Campbell, Superior Court in Maricopa County and John Leonardo, Superior Court in Pima County will be the presenters.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:05 p.m.